

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 14625 of 2004(N)

PETITIONER:

CHIEF GENERAL MANAGER, BHARAT SANCHAR
NIGAM LIMITED, O/O CHIEF GENERAL MANAGER,
KERALA TELECOM THIRUVANANTHAPURAM.

BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL

RESPONDENTS:

1. THE INDUSTRIAL TRIBUNAL, KOLLAM.

2. THE CIRCLE SECRETARY, BSNL MAZDOOR SANGH
O/O THE DEPUTY GENERAL MANAGER, BHARATHI MANSION
BUILDINGS, PLAMOOD, THIRUVANANTHAPURAM.

R2 BY ADV. SRI.SHAJI THOMAS PORKKATTIL
GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/12/2007, ALONG WITH WPC NO. 2709 OF 2005 THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: COPY OF THE PETITIN WITH AFFIDAVIT FILED BY THE 1ST RESPONDENT IN ID 35/2003.
- EXT. P2: COPY OF THE LETTER NO:BSNL/39-I/SR/2002 DATED 7-2-2003.
- EXT. P3: COPY OF WRITTEN OBJECTION FILED BY THE PETITIONER IN EXHIBITS P1 APPLICATION.
- EXT. P4: COPY OF THE ORDER DATED 13-1-2004 PASSED BY THE 1ST RESPONDENT IN CMP 14/2003 IN ID 35/2003.

RESPONDENT'S EXHIBITS:

- EXT. R2(A): COPY OF THE CERTIFICATE OF REGISTRATION NO.4905 DATED 17.9.2001 OF THE 2ND RESPONDENT-UNION, ISSUED BY ADDL. REGISTRAR OF TRADE UNIONS, DELHI.
- EXT. R2(B): COPY OF THE MINUTES OF CONCILIATION PROCEEDINGS DATED 27.3.2000, SIGNED BY ASSISTANT LABOUR COMMISSION (C), TRIVANDRUM.
- EXT. R2(C): COPY OF THE ORDER NO.L.40012/161/2001-IR(DU) DATED 28.9.2001 ISSUED BY THE GOVERNMENT OF INDIA.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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W.P.(C) Nos.14625 of 2004 & 2709 of 2005

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Dated this the 7th day of December, 2007

JUDGMENT

The petitioner in both the above writ petitions is the chief manager of BSNL, Trivandrum who is the management in ID No.35/2003 before the Industrial Tribunal, Kollam. In W.P.(C) No.14625 of 2004, he is challenging Ext.P4 order passed by the Tribunal in CMP No.14/2003, in the said ID. When that dispute was raised before the conciliation officer, the workmen were represented by 3 unions. Later on, when the management was renamed as Bharat Sanchar Nigam Ltd., these three unions decided to function as one union named as BSNL Mazdoor Sangh. This union filed the said C.M.P. In the said I.D., seeking permission to represent the workmen in the dispute, which was opposed by the petitioner management on the ground that the union is not recognised by the management. Overruling the objection, the Tribunal allowed the petition by the order impugned in the writ petition. The petitioner management is

challenging that order. The contention raised by the petitioner is that the 2nd respondent-union has not been recognised by the BSNL as competent to represent the employees of the BSNL and therefore they have no right to be heard in the matter. The petitioner also relies on the decision of the Supreme Court in Civil Appeal No.3337-3338 of 2002 as also the interim order of the High Court of Andhra Pradesh in a writ petition pending before that High Court.

3. The learned counsel for the 2nd respondent opposes the contentions of the petitioner. He would submit that the Industrial Disputes Act does not require that an industrial dispute should be raised by a recognised union or a majority union, or that in an industrial dispute workmen can be represented only by a recognised union or a majority union. According to them even without a union, a group of workmen themselves can join together to raise an industrial dispute, and one representative among them can represent those workmen in proceedings before the Tribunal or Labour Court.

4. I have considered the rival contentions. "Industrial dispute" is defined in Section 2(k) of the Industrial Disputes Act thus:

""industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

There is nothing in the Industrial Disputes Act, which requires that a dispute, to be an industrial dispute, should be raised by a recognised union or a majority union. It would suffice if there is a controversy between the employer on the one side and the workmen on the other. What is essential is that on account of the controversy, there is potential cause for disharmony, which is likely to adversely affect industrial peace and a substantial number of workmen raises a dispute about it. In such circumstances the Industrial Disputes Act requires that in the interest of industrial peace, it should be resolved in one of the modes prescribed by the Act. (See the decision of the Supreme Court in **Indian Oxygen Ltd. V. Its Workmen** - 1979 Lab. I.C.

585)

5. It is not even necessary that a registered body should raise the dispute. Once it is shown that a body of workmen either acting through their union or otherwise has sponsored the dispute it becomes an industrial dispute. (See **Newspapers Ltd., Allahabad v. U.P. State Industrial Tribunal and Others** - AIR 1960 SC 1328.) In the decision of **Associated Cement Companies v. Their workmen** (AIR 1960 SC 777) the Supreme Court held that an industrial dispute may be raised by a group of workmen, who may not represent all or even the majority of the workmen and the award in such a dispute would be binding on all workmen, present and future. In the decision of **Workmen of M/s.Dharam Pal Prem Chand (Saugandhi) v. M/s.Dharam Pal Prem Chand (Saugandhi)** reported in AIR 1966 SC 182, the Supreme Court laid down the following principles.

(a) Notwithstanding the width of the words used by the Act in defining an 'industrial dispute', in order to become an industrial dispute, the dispute should have been raised by a union or in the

absence of a union by a number of workmen.

(b) A union may raise a valid dispute though it may be a minority union of the workmen of the establishment. (see also **Workmen v. I.I.T.I. Cycles of India Ltd. and others** - 1995 Supp. (2) SCC 732)

(c) If there is no union of workmen in an establishment, a group of employees can raise the dispute in which case the dispute becomes an industrial dispute even though it is a dispute relating to an individual workman.

(d) Where the workmen of an establishment have no union of their own and some or all of them have joined another union of another establishment, belonging to the same industry that union can validly raise an industrial dispute on behalf of the workmen of the establishment.

6. It is not necessary that the sponsoring union should be a registered trade union or a recognised trade union for the dispute becoming a valid industrial dispute. In a case arising on facts somewhat similar to the facts of this case, i.e. **Pradip**

Lamp Works v. Workmen of Pradip Lamp Works ((1970) 1 LLJ 507 (SC)) disputes regarding dismissal of 10 workmen were raised before the conciliation officer by the individual workmen themselves. But their cause was subsequently taken up by a new union by a substantial number of co-workmen, which was as yet unregistered and unrecognised. The Supreme Court held that the fact that these disputes were not taken up by a registered or recognised union does not mean that they were not industrial disputes.

7. The decision of the Supreme Court relied upon by the petitioner is not relevant to decide the issue since that decision relates to right of an unrecognised union to take part in grievance proceedings formulated by the management themselves. The management can certainly lay down rules regarding recognition of unions of its workmen and insist that the management would deal only with unions recognised by it in accordance with such rules. But that would not stand in the way of unrecognised, unregistered and minority unions or even a group of individual

workmen from validly raising an industrial dispute. The order of the Andhra Pradesh High Court is only an interim order and in anyway the same cannot be good law in view of the Supreme Court decisions on the subject.

8. What has happened in this case is only that the existing recognised unions which are in the party array of the industrial dispute were amalgamated into and got themselves registered as one single union. The new union wanted to formally come in as party to the dispute. The management is not in any way prejudiced by the same. At worst, the new union is only a conglomeration of the existing unions who cannot be prevented from representing the cause of the workmen who were members of the three erstwhile unions which merged to form the new union. In fact denial of opportunity to the new union to represent the cause of the workmen would amount to denial of natural justice to the workmen. Further, if the new union is not permitted to represent the workmen, since the other recognised unions have already merged with the new union, there would be

nobody to represent the cause of the workmen in the dispute which cannot be allowed to happen in the interest of justice by allowing such technical contentions raised by the management, who is not in any way prejudiced by allowing such representation.

9. In view of the above, I am satisfied that the impugned order of the Tribunal permitting the new union to represent the workmen of the management in the industrial dispute does not suffer from any infirmity whatsoever. Accordingly, the challenge against Ext.P4 order fails and accordingly, W.P.(C) No.14625/2004 is dismissed.

W.P.(C) No.2709 of 2005

This writ petition happens to be filed by the petitioner in W.P.(C) No.14625/04 itself, because while the stay order in that writ petition was pending, the industrial tribunal proceeded with the industrial dispute and passed Ext.P5 award ex-parte. The

contention of the petitioner is that since the stay order was in force, the Tribunal could not have validly continued with the adjudication of the industrial dispute and therefore, the petitioner did not take part in the proceedings which led to Ext.P5 ex-parte award. Therefore, Ext.P5 award may be quashed and the dispute may be remanded for fresh consideration in accordance with law, is the prayer made by the management. The learned counsel for the union submits that the stay order was never produced before the Industrial Tribunal and further the stay in W.P.(C) No. 14625/04 was not against stay of proceedings of the Tribunal. According to them the stay was only relating to Ext. P4 order. That order dealt with permission to the present union to represent the employees involved in the dispute.

2. Whatever that be, I feel that in the interest of justice, the petitioner is entitled to an opportunity to adduce evidence in the matter on merit in view of the peculiar circumstances of the case, arising in view of the orders of this Court. Accordingly,

Ext.P5 award impugned in W.P.(C) No.2709 of 2005 is quashed and the industrial dispute is remanded to the Industrial Tribunal, Kollam for fresh adjudication after giving opportunity to both sides to adduce evidence. I make it clear that I have not expressed any opinion on the merits of the contentions of the parties before the Industrial Tribunal regarding the issues involved in the industrial dispute, and it would be open to the Tribunal to consider the issues on the basis of the pleadings and evidence produced by the parties before him.

The writ petitions are disposed of as above.

**S.SIRI JAGAN,
JUDGE**

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